

Missouri Revised Statutes
Chapter 444
Rights and Duties of Miners and Mine
Owners
Section 444.760

August 28, 2009

Short title.

444.760. This act may be known and cited as "The Land Reclamation Act".

(L. 1971 H.B. 519 § 1)

Declaration of policy.

444.762. It is hereby declared to be the policy of this state to strike a balance between surface mining of minerals and reclamation of land subjected to surface disturbance by surface mining, as contemporaneously as possible, and for the conservation of land, and thereby to preserve natural resources, to encourage the planting of forests, to advance the seeding of grasses and legumes for grazing purposes and crops for harvest, to aid in the protection of wildlife and aquatic resources, to establish recreational, home and industrial sites, to protect and perpetuate the taxable value of property, and to protect and promote the health, safety and general welfare of the people of this state.

(L. 1971 H.B. 519 § 2, A.L. 1990 H.B. 1584)

Definitions.

444.765. Wherever used or referred to in sections 444.760 to 444.790, unless a different meaning clearly appears from the context, the following terms mean:

(1) "Affected land", the pit area or area from which overburden shall have been removed, or upon which overburden has been deposited after September 28, 1971. When mining is conducted underground, affected land means any excavation or removal of overburden required to create access to mine openings, except that areas of disturbance encompassed by the actual underground openings for air shafts, portals, adits and haul roads in addition to disturbances within fifty feet of any openings for haul roads, portals or adits shall not be considered affected

land. Sites which exceed the excluded areas by more than one acre for underground mining operations shall obtain a permit for the total extent of affected lands with no exclusions as required under sections 444.760 to 444.790;

(2) "Beneficiation", the dressing or processing of minerals for the purpose of regulating the size of the desired product, removing unwanted constituents, and improving the quality or purity of a desired product;

(3) "Commercial purpose", the purpose of extracting minerals for their value in sales to other persons or for incorporation into a product;

(4) "Commission", the land reclamation commission in the department of natural resources;

(5) "Construction", construction, erection, alteration, maintenance, or repair of any facility including but not limited to any building, structure, highway, road, bridge, viaduct, water or sewer line, pipeline or utility line, and demolition, excavation, land clearance, and moving of minerals or fill dirt in connection therewith;

(6) "Department", the department of natural resources;

(7) "Director", the staff director of the land reclamation commission;

(8) "Excavation", any operation in which earth, minerals, or other material in or on the ground is moved, removed, or otherwise displaced for purposes of construction at the site of excavation, by means of any tools, equipment, or explosives and includes, but is not limited to, backfilling, grading, trenching, digging, ditching, drilling, well-drilling, auguring, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, demolition of structures, and the use of high-velocity air to disintegrate and suction to remove earth and other materials. For purposes of this section, excavation or removal of overburden for purposes of mining for a commercial purpose or for purposes of reclamation of land subjected to surface mining is not included in this definition. Neither shall excavations of sand and gravel by political subdivisions using their own personnel and equipment or private individuals for personal use be included in this definition;

(9) "Fill dirt", material removed from its natural location through mining or construction activity, which is a mixture of unconsolidated earthy material, which may include some minerals, and which is used to fill, raise, or level the surface of the ground at the site of disposition, which may be at the site it was removed or on other property, and which is not processed to extract mineral components of the mixture. Backfill material for use in completing reclamation is not included in this definition;

(10) "Land improvement", work performed by or for a public or private owner or lessor of real property for purposes of improving the suitability of the property for construction at an undetermined future date, where specific plans for construction do not currently exist;

(11) "Mineral", a constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source, or raw material for manufacturing or construction material. For the purposes of this section, this definition includes barite, tar sands, and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas together with other chemicals recovered therewith;

(12) "Mining", the removal of overburden and extraction of underlying minerals or the extraction of minerals from exposed natural deposits for a commercial purpose, as defined by this section;

(13) "Operator", any person, firm or corporation engaged in and controlling a surface mining operation;

(14) "Overburden", all of the earth and other materials which lie above natural deposits of minerals; and also means such earth and other materials disturbed from their natural state in the process of surface mining other than what is defined in subdivision (10) of this section;

(15) "Peak", a projecting point of overburden created in the surface mining process;

(16) "Pit", the place where minerals are being or have been mined by surface mining;

(17) "Public entity", the state or any officer, official, authority, board, or commission of the state and any county, city, or other political

subdivision of the state, or any institution supported in whole or in part by public funds;

(18) "Refuse", all waste material directly connected with the cleaning and preparation of substance mined by surface mining;

(19) "Ridge", a lengthened elevation of overburden created in the surface mining process;

(20) "Site" or "mining site", any location or group of associated locations separated by a natural barrier where minerals are being surface mined by the same operator;

(21) "Surface mining", the mining of minerals for commercial purposes by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed, and shall include mining of exposed natural deposits of such minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operations for such minerals. For purposes of the provisions of sections 444.760 to 444.790, surface mining shall not include excavations to move minerals or fill dirt within the confines of the real property where excavation occurs or to remove minerals or fill dirt from the real property in preparation for construction at the site of excavation. No excavation of fill dirt shall be deemed surface mining regardless of the site of disposition or whether construction occurs at the site of excavation.

(L. 1971 H.B. 519 § 3, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453, A.L. 2005 H.B. 824, A.L. 2009 H.B. 246)

Exceptions to land reclamation act provisions.

444.766. 1. No provision of sections 444.760 to 444.790 shall apply to the excavation of minerals or fill dirt for the purposes of construction or land improvement as unrelated to the mining of minerals for a commercial purpose or reclamation of land subsequent to the surface mining of minerals.

2. No permit is required under sections 444.760 to 444.790 for the purpose of moving minerals or fill dirt within the confines of real property where excavation occurs, or for purposes of removing minerals or fill dirt from the real property as provided in this section.

(1) Excavations for construction pursuant to engineering plans and specifications prepared by an architect, professional engineer, or landscape architect licensed pursuant to chapter 327, RSMo, or any excavation for construction performed under a written contract that requires excavation of minerals or fill dirt and establishes dates for completion of work and specifies the terms of payment for work, shall be presumed to be for the purposes of construction and shall not require a permit for surface mining.

(2) Excavations for purposes of land improvement where minerals removed from the site are excess minerals that cannot be used on-site for any practical purpose and at no time are subjected to crushing, screening, or other means of beneficiation with the exception of removal of dead trees, decaying vegetation, tree limbs, and stumps shall be presumed to be for the purposes of land improvement and shall not require a permit for surface mining, provided that:

(a) The site has not been designated as a surface mine by the federal Mine Safety and Health Administration;

(b) Minerals from the property are not used for commercial purposes on a frequent or ongoing basis; and

(c) A pit, peak, or ridge does not persist at the site as inconsistent with the purposes of land improvement.

(3) Permits shall not be required for the excavation of fill dirt, regardless of the site of disposition or whether construction occurs at the site of excavation.

3. (1) If the director or his or her designee determines that a surface mining permit is required for real property which is purported to be for purposes of construction or land improvement not requiring a surface mining permit under this section, such determination shall be sent in writing to the owner of the property by certified mail stating the reasons for such determination. Upon request of the person receiving the letter, an informal conference shall be scheduled with the director within fifteen calendar days to discuss the determination. Following the informal conference, the director shall issue a written determination regarding his or her findings of fact no later than thirty calendar days after the date of the conference. If the director agrees that a surface mining permit

is required and the person disagrees with that decision, the person may make a written request for a hearing before the commission at its next regular meeting. Such written request shall be filed within thirty calendar days after receipt of the director's written determination, except when the thirtieth day would be later than the date of the next regularly scheduled commission meeting, the written request shall be filed at least seven days prior to the commission meeting unless the director and the person filing the request mutually agree to place the matter on the commission's agenda for a later meeting. The commission shall issue a written determination as to whether a surface mining permit is required under this state's law within thirty calendar days after the hearing. The written determination may be appealed as provided under this chapter.

(2) Until a final written determination has been issued under the process established under subdivision (1) of this subsection, the person receiving a letter stating the reasons a mining permit is required may continue activity at the site in dispute. The commission may stay the director's determination. If the final written determination is that a permit is required, all fees otherwise provided by statute or rules of the commission shall apply. If the determination is that no permit is required, no permit fees shall be required by the director or the commission.

(3) The process set out in this subsection for determining whether a mining permit is required shall not be subject to the hearing requirements of section 444.789.

(L. 2005 H.B. 824, A.L. 2009 H.B. 246)

Powers of commission--rules, procedure, review.

444.767. The commission may:

(1) Adopt and promulgate rules and regulations pursuant to section 444.530 and chapter 536, RSMo, respecting the administration of sections 444.760 to 444.790 and in conformity therewith;

(2) Encourage and conduct investigation, research, experiments and demonstrations, and collect and disseminate information relating to strip mining and reclamation and conservation of lands and waters affected by strip mining;

(3) Examine and pass on all applications and plans and specifications submitted by the

operator for the method of operation and for the reclamation and conservation of the area of land affected by the operation;

(4) Make investigations and inspections which are necessary to ensure compliance with the provisions of sections 444.760 to 444.790;

(5) Conduct hearings pursuant to sections 444.760 to 444.790 and may administer oaths or affirmations and subpoena witnesses to the inquiry;

(6) Order, after hearing, the revocation of any permit and to cease and desist operations for failure to comply with any of the provisions of sections 444.760 to 444.790 or any corrective order of the commission;

(7) Order forfeiture of any bond for failure to comply with any provisions of sections 444.760 to 444.790 or any corrective order of the commission or other order of the commission;

(8) Cause to be instituted in any court of competent jurisdiction legal proceedings for injunction or other appropriate relief to enforce the provisions of sections 444.760 to 444.790 and any order of the commission promulgated thereunder;

(9) Retain, employ, provide for, and compensate, within the limits of appropriations made for that purpose, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 444.760 to 444.790 and prescribe the times at which they shall be appointed and their powers and duties;

(10) Study and develop plans for the reclamation of lands that have been strip mined prior to September 28, 1971;

(11) Accept, receive and administer grants or other funds or gifts from public and private agencies and individuals, including the federal government, for the purpose of carrying out any of the functions of sections 444.760 to 444.790, including the reclamation of lands strip mined prior to August 28, 1990. The commission may promulgate such rules and regulations or enter into such contracts as it may deem necessary for carrying out the provisions of this subdivision;

(12) Budget and receive duly appropriated moneys for expenditures to carry out the

provisions and purposes of sections 444.760 to 444.790;

(13) Prepare and file a biennial report with the governor and members of the general assembly;

(14) Order, after hearing, an operator to adopt such corrective measures as are necessary to comply with the provisions of sections 444.760 to 444.790.

(L. 1971 H.B. 519 § 4, A.L. 1990 H.B. 1584, A.L. 1993 S.B. 52, A.L. 2001 H.B. 453)

Permit required, when--release of certain bonds--complaints, requirements.

444.770. 1. It shall be unlawful for any operator to engage in surface mining without first obtaining from the commission a permit to do so, in such form as is hereinafter provided, including any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, except as provided in subsection 2 of this section.

2. (1) A property owner or operator conducting gravel removal at the request of a property owner for the primary purpose of managing seasonal gravel accretion on property not used primarily for gravel mining, or a political subdivision who contracts with an operator for excavation to obtain sand and gravel material solely for the use of such political subdivision shall be exempt from obtaining a permit as required in subsection 1 of this section. Such gravel removal shall be conducted solely on the property owner's or political subdivision's property and shall be in accordance with department guidelines, rules, and regulations. The property owner shall notify the department before any person or operator conducts gravel removal from the property owner's property if the gravel is sold.

Notification shall include the nature of the activity, name of the county and stream in which the site is located and the property owner's name. The property owner shall not be required to notify the department regarding any gravel removal at each site location for up to one year from the original notification regarding that site. The property owner shall renotify the department before any person or operator conducts gravel removal at any site after the expiration of one year from the previous notification regarding that site. At the time of each notification to the

department, the department shall provide the property owner with a copy of the department's guidelines, rules, and regulations relevant to the activity reported. Said guidelines, rules and regulations may be transmitted either by mail or via the Internet.

(2) The annual tonnage of gravel mined by such property owner or operator conducting gravel removal at the request of a property owner shall be less than two thousand tons, with a site limitation of one thousand tons annually. Any operator conducting gravel removal at the request of a property owner that has removed two thousand tons of sand and gravel material within one calendar year shall have a watershed management practice plan approved by the commission in order to remove any future sand or gravel material the remainder of the calendar year. The application for approval shall be accompanied by an application fee equivalent to the fee paid under section 444.772 and shall contain the name of the watershed from which the operator will be conducting sand and gravel removal, the location within the watershed district that the sand and gravel will be removed, and the description of the vehicles and equipment used for removal. Upon approval of the watershed management practice plan, the department shall provide a copy of the relevant commission regulations to the operator.

(3) No property owner or operator conducting gravel removal at the request of a property owner for the primary purpose of managing seasonal gravel accretion on property not used primarily for gravel mining shall conduct gravel removal from any site located within a distance, to be determined by the commission and included in the guidelines, rules, and regulations given to the property owner at the time of notification, of any building, structure, highway, road, bridge, viaduct, water or sewer line, and pipeline or utility line.

3. Sections 444.760 to 444.790 shall apply only to those areas which are opened on or after January 1, 1972, or to the extended portion of affected areas extended after that date. The effective date of this section for minerals not previously covered under the provisions of sections 444.760 to 444.790 shall be August 28, 1990.

4. All surface mining operations where land is affected after September 28, 1971, which are

under the control of any government agency whose regulations are equal to or greater than those imposed by section 444.774, are not subject to the further provisions of sections 444.760 to 444.790, except that such operations shall be registered with the land reclamation commission.

5. Any portion of a surface mining operation which is subject to the provisions of sections 260.200 to 260.245, RSMo, and the regulations promulgated thereunder, shall not be subject to the provisions of sections 444.760 to 444.790, and any bonds or portions thereof applicable to such operations shall be promptly released by the commission, and the associated permits canceled by the commission upon presentation to it of satisfactory evidence that the operator has received a permit pursuant to section 260.205, RSMo, and the regulations promulgated thereunder. Any land reclamation bond associated with such released permits shall be retained by the commission until presentation to the commission of satisfactory evidence that:

(1) The operator has complied with sections 260.226 and 260.227, RSMo, and the regulations promulgated thereunder, pertaining to closure and postclosure plans and financial assurance instruments; and

(2) The operator has commenced operation of the solid waste disposal area or sanitary landfill as those terms are defined in chapter 260, RSMo.

6. Notwithstanding the provisions of subsection 1 of this section, any political subdivision which uses its own personnel and equipment or any private individual for personal use may conduct in-stream gravel operations without obtaining from the commission a permit to conduct such an activity.

7. Any person filing a complaint of an alleged violation of this section with the department shall identify themselves by name and telephone number, provide the date and location of the violation, and provide adequate information, as determined by the department, that there has been a violation. Any records, statements, or communications submitted by any person to the department relevant to the complaint shall remain confidential and used solely by the department to investigate such alleged violation.

(L. 1971 H.B. 519 § 5, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453, A.L. 2009 H.B. 246)

**Permit--application, contents, fees--
amendment, how made--successor
operator, duties of.**

444.772. 1. Any operator desiring to engage in surface mining shall make written application to the director for a permit.

2. Application for permit shall be made on a form prescribed by the commission and shall include:

- (1) The name of all persons with any interest in the land to be mined;
- (2) The source of the applicant's legal right to mine the land affected by the permit;
- (3) The permanent and temporary post office address of the applicant;
- (4) Whether the applicant or any person associated with the applicant holds or has held any other permits pursuant to sections 444.500 to 444.790, and an identification of such permits;
- (5) The written consent of the applicant and any other persons necessary to grant access to the commission or the director to the area of land affected under application from the date of application until the expiration of any permit granted under the application and thereafter for such time as is necessary to assure compliance with all provisions of sections 444.500 to 444.790 or any rule or regulation promulgated pursuant to them. Permit applications submitted by operators who mine an annual tonnage of less than ten thousand tons shall be required to include written consent from the operator to grant access to the commission or the director to the area of land affected;
- (6) A description of the tract or tracts of land and the estimated number of acres thereof to be affected by the surface mining of the applicant for the next succeeding twelve months; and
- (7) Such other information that the commission may require as such information applies to land reclamation.

3. The application for a permit shall be accompanied by a map in a scale and form specified by the commission by regulation.

4. The application shall be accompanied by a bond, security or certificate meeting the requirements of section 444.778, a geologic resources fee authorized under section 256.700, RSMo, and a permit fee approved by the commission not to exceed one thousand dollars. The commission may also require a fee for each site listed on a permit not to exceed four hundred dollars for each site. If mining operations are not conducted at a site for six months or more during any year, the fee for such site for that year shall be reduced by fifty percent. The commission may also require a fee for each acre bonded by the operator pursuant to section 444.778 not to exceed twenty dollars per acre. If such fee is assessed, the per-acre fee on all acres bonded by a single operator that exceed a total of two hundred acres shall be reduced by fifty percent. In no case shall the total fee for any permit be more than three thousand dollars. Permit and renewal fees shall be established by rule, except for the initial fees as set forth in this subsection, and shall be set at levels that recover the cost of administering and enforcing sections 444.760 to 444.790, making allowances for grants and other sources of funds. The director shall submit a report to the commission and the public each year that describes the number of employees and the activities performed the previous calendar year to administer sections 444.760 to 444.790. For any operator of a gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, the total cost of submitting an application shall be three hundred dollars. The issued permit shall be valid from the date of its issuance until the date specified in the mine plan unless sooner revoked or suspended as provided in sections 444.760 to 444.790. Beginning August 28, 2007, the fees shall be set at a permit fee of eight hundred dollars, a site fee of four hundred dollars, and an acre fee of ten dollars, with a maximum fee of three thousand dollars. Fees may be raised as allowed in this subsection after a regulation change that demonstrates the need for increased fees.

5. An operator desiring to have his or her permit amended to cover additional land may file an amended application with the commission. Upon receipt of the amended application, and such additional fee and bond as may be required pursuant to the provisions of sections 444.760 to 444.790, the director shall, if the applicant complies with all applicable regulatory requirements, issue an amendment to the original

permit covering the additional land described in the amended application.

6. An operation may withdraw any land covered by a permit, excepting affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of sections 444.760 to 444.790 shall be reduced proportionately.

7. Where mining or reclamation operations on acreage for which a permit has been issued have not been completed, the permit shall be renewed. The operator shall submit a permit renewal form furnished by the director for an additional permit year and pay a fee equal to an application fee calculated pursuant to subsection 4 of this section, but in no case shall the renewal fee for any operator be more than three thousand dollars. For any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, the permit as to such acreage shall be renewed by applying on a permit renewal form furnished by the director for an additional permit year and payment of a fee of three hundred dollars. Upon receipt of the completed permit renewal form and fee from the operator, the director shall approve the renewal. With approval of the director and operator, the permit renewal may be extended for a portion of an additional year with a corresponding prorating of the renewal fee.

8. Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the commission may release the first operator from all liability pursuant to sections 444.760 to 444.790 as to that particular operation if both operators have been issued a permit and have otherwise complied with the requirements of sections 444.760 to 444.790 and the successor operator assumes as part of his or her obligation pursuant to sections 444.760 to 444.790 all liability for the reclamation of the area of land affected by the former operator.

9. The application for a permit shall be accompanied by a plan of reclamation that meets the requirements of sections 444.760 to 444.790 and the rules and regulations promulgated pursuant thereto, and shall contain a verified statement by the operator setting forth the proposed method of operation, reclamation, and

a conservation plan for the affected area including approximate dates and time of completion, and stating that the operation will meet the requirements of sections 444.760 to 444.790, and any rule or regulation promulgated pursuant to them.

10. At the time that a permit application is deemed complete by the director, the operator shall publish a notice of intent to operate a surface mine in any newspaper qualified pursuant to section 493.050, RSMo, to publish legal notices in any county where the land is located. If the director does not respond to a permit application within forty-five calendar days, the application shall be deemed to be complete. Notice in the newspaper shall be posted once a week for four consecutive weeks beginning no more than ten days after the application is deemed complete. The operator shall also send notice of intent to operate a surface mine by certified mail to the governing body of the counties or cities in which the proposed area is located, and to the last known addresses of all record landowners of contiguous real property or real property located adjacent to the proposed mine plan area. The notices shall include the name and address of the operator, a legal description consisting of county, section, township and range, the number of acres involved, a statement that the operator plans to mine a specified mineral during a specified time, and the address of the commission. The notices shall also contain a statement that any person with a direct, personal interest in one or more of the factors the commission may consider in issuing a permit may request a public meeting, a public hearing or file written comments to the director no later than fifteen days following the final public notice publication date.

11. The commission may approve a permit application or permit amendment whose operation or reclamation plan deviates from the requirements of sections 444.760 to 444.790 if it can be demonstrated by the operator that the conditions present at the surface mining location warrant an exception. The criteria accepted for consideration when evaluating the merits of an exception or variance to the requirements of sections 444.760 to 444.790 shall be established by regulations.

12. Fees imposed pursuant to this section shall become effective August 28, 2007, and shall

expire on December 31, 2013. No other provisions of this section shall expire.

(L. 1971 H.B. 519 § 6, A.L. 1984 H.B. 1162, A.L. 1990 H.B. 1584, A.L. 1992 H.B. 1732, A.L. 2001 H.B. 453, A.L. 2007 S.B. 54)

Effective 1-01-08

**Director to investigate applications--
recommendation--public meeting or
hearing--denial of permit, when.**

444.773. 1. All applications for a permit shall be filed with the director, who shall promptly investigate the application and make a recommendation to the commission within four weeks after the public notice period provided in section 444.772 expires as to whether the permit should be issued or denied. If the director determines that the application has not fully complied with the provisions of section 444.772 or any rule or regulation promulgated pursuant to that section, the director shall recommend denial of the permit. The director shall consider any written comments when making his or her recommendation to the commission on the issuance or denial of the permit.

2. If the recommendation of the director is to deny the permit, a hearing as provided in sections 444.760 to 444.790, if requested by the applicant within fifteen days of the date of notice of recommendation of the director, shall be held by the commission.

3. If the recommendation of the director is for issuance of the permit, the director shall issue the permit without a public meeting or a hearing except that upon petition, received prior to the date of the notice of recommendation, from any person whose health, safety or livelihood will be unduly impaired by the issuance of this permit, a public meeting or a hearing may be held. If a public meeting is requested pursuant to this chapter and the applicant agrees, the director shall, within thirty days after the time for such request has passed, order that a public meeting be held. The meeting shall be held in a reasonably convenient location for all interested parties. The applicant shall cooperate with the director in making all necessary arrangements for the public meeting. Within thirty days after the close of the public meeting, the director shall recommend to the commission approval or denial of the permit. If the public meeting does not resolve the concerns expressed by the public,

any person whose health, safety or livelihood will be unduly impaired by the issuance of such permit may make a written request to the land reclamation commission for a formal public hearing. The land reclamation commission may grant a public hearing to formally resolve concerns of the public. Any public hearing before the commission shall address one or more of the factors set forth in this section.

4. In any hearing held pursuant to this section the burden of proof shall be on the applicant for a permit. If the commission finds, based on competent and substantial scientific evidence on the record, that an interested party's health, safety or livelihood will be unduly impaired by the issuance of the permit, the commission may deny such permit. If the commission finds, based on competent and substantial scientific evidence on the record, that the operator has demonstrated, during the five-year period immediately preceding the date of the permit application, a pattern of noncompliance at other locations in Missouri that suggests a reasonable likelihood of future acts of noncompliance, the commission may deny such permit. In determining whether a reasonable likelihood of noncompliance will exist in the future, the commission may look to past acts of noncompliance in Missouri, but only to the extent they suggest a reasonable likelihood of future acts of noncompliance. Such past acts of noncompliance in Missouri, in and of themselves, are an insufficient basis to suggest a reasonable likelihood of future acts of noncompliance. In addition, such past acts shall not be used as a basis to suggest a reasonable likelihood of future acts of noncompliance unless the noncompliance has caused or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. If a hearing petitioner or the commission demonstrates either present acts of noncompliance or a reasonable likelihood that the permit seeker or the operations of associated persons or corporations in Missouri will be in noncompliance in the future, such a showing will satisfy the noncompliance requirement in this subsection. In addition, such basis must be developed by multiple noncompliances of any environmental law administered by the Missouri department of natural resources at any single facility in Missouri that resulted in harm to the environment or impaired the health, safety or

livelihood of persons outside the facility. For any permit seeker that has not been in business in Missouri for the past five years, the commission may review the record of noncompliance in any state where the applicant has conducted business during the past five years. Any decision of the commission made pursuant to a hearing held pursuant to this section is subject to judicial review as provided in chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted.

(L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Reclamation requirements and conditions.

444.774. 1. Every operator to whom a permit is issued pursuant to the provisions of sections 444.760 to 444.790 may engage in surface mining upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

(1) All ridges and peaks of overburden created by surface mining, except areas meeting the qualifications of subdivision (4) of this subsection, or where washing, cleaning or retaining ponds and reservoirs may be formed under subdivision (2) of this subsection, shall be graded to a rolling topography traversable by farm machinery, but such slopes need not be reduced to less than the original grade of that area prior to mining, and the slope of the ridge of overburden resulting from a box cut need not be reduced to less than twenty-five degrees from horizontal whenever the same cannot be practically incorporated into the land reclaimed for wildlife purposes pursuant to subdivision (4) of this subsection. In surface mining the operator shall remove all debris and materials not allowed by the reclamation plan before the bond or any portion thereof may be released;

(2) As a means of controlling damaging erosion, the director may require the operator to construct terraces or use such other measures and techniques as are necessary to control soil erosion and siltation on reclaimed land. Such erosion control measures and techniques may also be required on overburden stockpiles if the erosion is causing environmental damage outside the permit area. In determining the grading requirements to restore barite pit areas, the sidewalls of the excavation shall be graded to a

point where it blends with the surrounding countryside, but in no case should the contour be such that erosion and siltation be increased;

(3) In the surface mining of tar sands, the operator shall recover and collect all spent sands and other refuse yielded from the processing of tar sands, whether such spent sands and refuse are produced at the surface mine or elsewhere, in the manner prescribed by the commission as conditions of the permit, and shall finally dispose of such spent sands and refuse in the manner prescribed by the commission as conditions of the permit and in accordance with the provisions of sections 444.760 to 444.790;

(4) Up to and including twenty-five percent of the total acreage to be reclaimed each year need not be graded to a rolling topography if the land is reclaimed for wildlife purposes as required by the commission, except that all peaks and ridges shall be leveled off to a minimum width of thirty feet or one-half the diameter of the base of the pile at the original ground surface whichever is less;

(5) Surface mining operations that remove and do not replace the lateral support shall not, unless mutually agreed upon by the operator and the adjacent property owner, remove the lateral support in the vicinity of any established right-of-way line of any public road, street or highway closer than a distance equal to twenty-five feet plus one and one-half times the depth of the unconsolidated material from such right-of-way line to the beginning of the excavation; except that, unless granted a variance by the commission, the minimum distance is fifty feet. The provisions of this subdivision shall apply to all existing surface mining operations beginning August 28, 1990, except as provided in subsection 3 of section 444.770;

(6) If surface mining is or has been conducted up to the minimum distance as defined in subdivision (5) of this subsection along an established right-of-way line of any public road, street or highway, a barrier or berm of adequate height shall be placed or constructed along the perimeter of the excavation. Adequate height shall mean a height of no less than three feet. Such barriers or berms shall not be required if barriers, berms or guardrails already exist on the adjoining right-of-way. Barriers or berms of adequate height may also be required by the commission when surface mining is or has been

conducted up to the minimum distance as defined in subdivision (5) of this subsection along other property lines, but only as necessary to mitigate serious and obvious threats to public safety;

(7) The operator may construct earth dams to form lakes in pits resulting from the final cut in a mining area; except that, the formation of the lakes shall not interfere with underground or other mining operations or damage adjoining property and shall comply with the requirements of subdivision (8) of this subsection;

(8) The operator shall cover the exposed face of a mineral seam where acid-forming materials are present to a depth of not less than two feet with earth that will support plant life or with a permanent water impoundment, terraced or otherwise so constructed as to prevent a constant inflow of water from any stream and to prevent surface water from flowing into such impoundment in such amounts as will cause runoff or spillage from said impoundment in a volume which will cause kills of fish or animals downstream. The operator shall cover an exposed deposit of tar sands, including an exposed face thereof, to a depth of not less than two feet with earth that will support plant life, and in addition may cover such deposit or face with a permanent water impoundment as provided above; however, no water impoundment shall be so constructed as to allow a permanent layer of oil or other hydrocarbon to collect on the surface of such impoundment in an amount which will adversely affect fish, wildfowl and other wildlife in or upon such impoundment;

(9) The operator shall reclaim all affected lands except as otherwise provided in sections 444.760 to 444.790. The operator shall determine on company-owned land, and with the landowners on leased land for leases that are entered into after August 28, 1990, which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial or other use including food, shelter, and ground cover for wildlife;

(10) The operator, with the approval of the commission, shall sow, set out or plant upon the affected land, seeds, plants, cuttings of trees, shrubs, grasses or legumes. The plantings or seedings shall be appropriate to the type of reclamation designated by the operator on

company-owned land and with the owner on leased land for leases entered into after August 28, 1990, and shall be based upon sound agronomic and forestry principles;

(11) Surface mining operations conducted in the flood plains of streams and rivers, and subject to periodic flooding, may be exempt from the grading requirements contained in this section if it can be demonstrated to the commission that such operations will be unsafe to pursue or ineffective in achieving reclamation required in this section because of the periodic flooding;

(12) Such other requirements as the commission may prescribe by rule or regulation to conform with the purposes and requirements of sections 444.760 to 444.790.

2. An operator shall commence the reclamation of the area of land affected by its operation as soon as possible after the completion of surface mining of viable mineral reserves in any portion of the permit area in accordance with the plan of reclamation required by subsection 9 of section 444.772, the rules and regulations of the commission, and the conditions of the permit. Grading shall be completed within twelve months after mining of viable mineral reserves is complete in that portion of the permit area based on the operator's prior mining practices at that site. Mining shall not be deemed complete if the operator can provide credible evidence to the director that viable mineral reserves are present. The seeding and planting of supporting vegetation, as provided in the reclamation plan, shall be completed within twenty-four months after with mining has been completed survival of such supporting vegetation by the second growing season.

3. With the approval of the director, the operator may substitute for all or any part of the affected land to be reclaimed an equal number of acres of land previously mined and not reclaimed. If any area is so substituted the operator shall submit a map and reclamation plan of the substituted area, and this map and reclamation plan shall conform to all requirements with respect to other maps and reclamation plan required by section 444.772. The operator shall be relieved of all obligations pursuant to sections 444.760 to 444.790 with respect to the land for which substitution has been permitted. On leased land, the landowner shall grant written approval to the

operator for substitutions made pursuant to this subsection.

4. The operator shall file a report with the commission within sixty days after the date of expiration of a permit stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished, and such other information as may be required by the commission.

5. The operator shall ensure that all affected land where vegetation is to be reestablished is covered with enough topsoil or other approved material in order to provide a proper rooting medium. No topsoil or other approved material is required to be placed on areas described in subdivision (4) of subsection 1 of this section or on any areas to be reclaimed for industrial uses as specified in the reclamation plan.

6. The commission may grant such additional time for meeting with the completion dates required by sections 444.760 to 444.790 as are necessary due to an act of God, war, strike, riot, catastrophe, or other good cause shown.

(L. 1971 H.B. 519 § 7, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453, A.L. 2009 H.B. 246)

Release of bond, conditions--petition, hearing--administrative review.

444.775. 1. Prior to release of the bond or any portion thereof, application shall be made by the operator to the commission, either with the completion of the report referred to in section 444.774 or subsequent to such report, for release of the bond.

2. The commission shall cause to have investigated the status of reclamation on land for which a release application has been filed.

3. If the director or the commission determines that the bond, or any portion thereof, should be released, an order may be so issued without hearing. If an owner of the land that has been affected by surface mining files a petition in opposition to the release of the bond within thirty days of the receipt date of the application for release, a hearing may be held, if the bond release criteria does not meet permit standards. A hearing may also be held if the director, within thirty days of the receipt date of the application for release, recommends denial of the application following its investigation. In such cases, the

commission may hold a hearing as provided in section 444.789 and enter such order as shall be appropriate.

4. If the commission determines that the bond or any portion thereof should not be released, the commission shall issue an order to that effect with the reasons for the order and shall give notice to the operator. A hearing shall be held by the commission as provided in section 444.789 if requested by the operator within thirty days of the date of notice of the order. At such hearing burden of proof shall be on the operator. After hearing, the commission shall enter such order as shall be appropriate and shall give notice to the operator.

5. All final decisions or orders of the commission shall be subject to judicial review as provided for in chapter 536, RSMo. No judicial review shall be available, however, until and unless all administrative remedies are exhausted.

(L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Entry upon lands and inspection by commission members--warrants to issue.

444.777. Commission members and authorized representatives of the commission may at all reasonable times enter upon any lands that have been or are being surface mined for the purpose of inspection to determine whether the provisions of sections 444.760 to 444.790 have been complied with. No person shall refuse entry or access requested for purposes of inspection, to any member of the commission or authorized representative who presents appropriate credentials, nor obstruct or hamper any such person in carrying out the inspection. A suitably restricted search warrant, describing the place to be searched and showing probable cause in writing and upon written oath or affirmation by any member of the commission or authorized representative, shall be issued by any circuit judge or associate circuit judge in the county where the search is to be made.

(L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Bond--form--amount--duration--forfeiture--power of reclamation.

444.778. 1. Any bond herein provided to be filed with the commission by the operator shall be in such form as the director prescribes, payable to

the state of Missouri, conditioned that the operator shall faithfully perform all requirements of sections 444.760 to 444.790 and comply with all rules of the commission made in accordance with the provisions of sections 444.760 to 444.790. The bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in this state, as surety. The operator shall file with the commission a bond payable to the state of Missouri with surety in the penal sum of eight thousand dollars for each permit up to eight acres and five hundred dollars for each acre thereafter that is to be mined. In addition, for each acre or portion thereof where topsoil has been removed from the site, an additional bond of four thousand five hundred dollars per acre shall be posted with the commission for each acre or portion thereof which will be revegetated, conditioned upon the faithful performance of the requirements set forth in sections 444.760 to 444.790 and of the rules and regulations of the commission. In lieu of a surety bond, the operator may furnish a bond secured by a personal certificate of deposit or irrevocable letter of credit in an amount equal to that of the required surety bond on conditions as prescribed by the commission. For any operator involved in any gravel mining operation where the annual tonnage of gravel mined by such operator is less than five thousand tons, such operator shall deposit a bond with the commission in the penal sum of five hundred dollars for each acre or portion thereof of land proposed thereafter by the operator to be subjected to surface mining for the mining permit year.

2. The bond shall remain in effect until the mined acreages have been reclaimed, approved and released by the commission. Forfeiture of such bond may be cause for denial of future permit applications.

3. A bond filed as above prescribed shall not be canceled by the surety except after not less than ninety days' notice to the commission and, in any case, not as to the acreage affected prior to the expiration of the notice period.

4. If the license to do business in this state of any surety upon a bond filed with the commission pursuant to sections 444.760 to 444.790 shall be suspended, revoked, or canceled, or if the surety should act to cancel the bond, the operator, within sixty days after receiving notice thereof from the commission, shall substitute for such

surety a good and sufficient corporate surety licensed to do business in this state or a bond secured by a certificate of deposit. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

5. The commission shall give written notice to the operator of any violation of sections 444.760 to 444.790 or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced within ninety days, the commission may proceed as provided in section 444.782 to request forfeiture of the bond.

6. The commission shall have the power to reclaim, in keeping with the provisions of sections 444.760 to 444.790, any affected land with respect to which a bond has been forfeited. The commission and any other agency and any contractor under a contract with the commission shall have reasonable right of access to the land affected to carry out such reclamation. The operator shall also have the right of access to the land affected to carry out such reclamation and shall notify the landowner on lease holdings that such right exists.

7. Whenever an operator shall have completed all requirements pursuant to the provisions of sections 444.760 to 444.790 as to any affected land, he or she shall notify the commission thereof. If the commission determines that the operator has completed the requirements, the commission shall release the operator from further obligations regarding the affected land and the penalty of the bond shall be reduced proportionately.

(L. 1971 H.B. 519 § 9, A.L. 1990 H.B. 1584, A.L. 1993 H.B. 312 & 257, A.L. 2001 H.B. 453)

Attorney general to represent commission, when--hearings on bond forfeiture, notice.

444.782. The attorney general, upon request of the commission, shall institute proceedings to have the bond of the operator forfeited for violation by the operator of any of the provisions of sections 444.760 to 444.790. Before making such request of the attorney general, the commission shall notify the operator in writing of the alleged violation or noncompliance and

shall afford the operator the right to appear before the commission at a hearing to be held not less than thirty days after the receipt of such notice by the operator. At the hearing the operator may present for the consideration of the commission, statements, documents and other information with respect to the alleged violation. After the conclusion of the hearing, the commission shall either withdraw the notice of violation or shall request the attorney general to institute proceedings to have the bond of the operator forfeited as to the land involved.

(L. 1971 H.B. 519 § 11, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Commission rules and regulations authorized--delegation of authority--forfeiture funds, where expended.

444.784. The commission may adopt and promulgate reasonable rules and regulations respecting the administration of sections 444.760 to 444.790. Any act authorized to be done by the director may be performed by any employee of the commission when designated by the director. All forfeitures collected after January 1, 1972, as provided in sections 444.760 to 444.790, shall be expended to reclaim and rehabilitate land affected in accordance with the provisions of sections 444.760 to 444.790. Insofar as is reasonably practicable, the funds shall be expended upon the lands for which the permit was issued and for which the bond was given.

(L. 1971 H.B. 519 § 12, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

CROSS REFERENCE:

Rules, procedure for making and rescinding, Chap. 536, RSMo

Operation without permit prohibited, penalty.

444.786. Any person required by sections 444.760 to 444.790 to have a permit who engages in the mining of minerals without previously securing a permit to do so as prescribed by sections 444.760 to 444.790, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than one thousand dollars. Each day of operation without the permit required by sections 444.760 to 444.790 will be deemed a separate violation.

(L. 1971 H.B. 519 § 13, A.L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Investigation by commission, attorney general to file suit--formal complaint procedure.

444.787. 1. The commission shall investigate surface mining operations in the state of Missouri. If the investigations show that surface mining is being or is going to be conducted without a permit in violation of sections 444.760 to 444.790 or in violation of any revocation order, and the commission has not issued a variance, the commission shall request the attorney general to file suit in the name of the state of Missouri for an injunction and civil penalties not to exceed one thousand dollars per day for each day, or part thereof, the violation has occurred. Suit may be filed either in the county where the violation occurs or in Cole County.

2. If the investigation shows that a surface mining operation for which a permit has been issued is being conducted contrary to or in violation of any provision of sections 444.760 to 444.790 or any rule or regulation promulgated by the commission or any condition imposed on the permit or any condition of the bond, the director may by conference, conciliation and persuasion endeavor to eliminate the violation. If the violation is not eliminated, the director shall provide to the operator by registered mail a notice describing the nature of the violation, corrective measures to be taken to abate the violation, and the time period for abatement. Within fifteen days of receipt of this notice the operator may request an informal conference with the director to contest the notice. The director may modify, vacate or enforce the notice and shall provide notice to the operator of his action within thirty days of the informal conference. If the operator fails to comply with the notice, as amended by the director, in the time prescribed within the notice, the director shall file a formal complaint with the commission for suspension or revocation of the permit, and for forfeiture of bond, or for appropriate corrective measures. When the director files a formal complaint, the commission shall cause to have issued and served upon the person complained against a written notice together with a copy of the formal complaint, which shall specify the provision of sections 444.760 to 444.790 or the rule or regulation or

the condition of the permit or of the bond of which the person is alleged to be in violation, a statement of the manner in, and the extent to which, the person is alleged to be in violation. The person complained against may, within fifteen days of receipt of the complaint, request a hearing before the commission. Such hearing shall be conducted in accordance with the provisions of section 444.789.

3. After due consideration of the hearing record, or upon failure of the operator to request a hearing by the date specified in the complaint, the commission shall issue and enter such final order and make such final determination as it shall deem appropriate under the circumstances. Included in such order and determination may be the revocation of any permit and to cease and desist operations. The commission shall immediately notify the respondent of its decision in writing by certified mail.

4. Any final order or determination or other final action by the commission shall be approved in writing by at least four members of the commission. The commission shall not issue any permit to any person who has had a permit revoked until the violation that caused the revocation is corrected to the satisfaction of the commission. Any final order of the commission can be appealed in accordance with chapter 536, RSMo.

(L. 1990 H.B. 1584, A.L. 1991 S.B. 45, A.L. 2001 H.B. 453)

Civil action.

444.788. In the event the commission determines that any provisions of sections 444.760 to 444.790, rules and regulations promulgated thereunder, permits issued, conditions of the bond, or any final order or determination made by the commission or the director is being violated, the commission may, either after judicial review or simultaneously with judicial review, cause to have instituted a civil action, either in the county where the violation occurs or in Cole County, for injunctive relief, for collection of the civil penalty and for forfeiture of bond. The attorney general shall bring such action, at the request of the commission, in the name of the state of Missouri.

(L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Administrative procedure-- inapplicability to public meetings.

444.789. 1. Any hearing pursuant to this section shall be of record and shall be a contested case.

2. Parties to such a hearing may make oral argument, introduce testimony and evidence, and cross-examine witnesses.

3. The hearing shall be before the commission or the chairman of the commission may designate one commission member as hearing officer, or may appoint a member in good standing of the Missouri Bar as hearing officer to hold the hearing and make recommendations to the commission, but the commission shall make the final decision thereon and any member participating in the decision shall review the record before making the decision.

4. In any such hearing any member of the commission may issue in the name of the commission notice of hearing and subpoenas as provided for in section 536.077, RSMo.

5. The rules of discovery that apply to any civil case shall apply to hearings held by the commission.

6. The administrative procedures in this section shall not apply to the public meetings pursuant to section 444.773.

(L. 1990 H.B. 1584, A.L. 2001 H.B. 453)

Administrative penalties--not to be assessed for minor violation, definition--amount set by rule, limitation--payment when--appeal, effect--surcharge due when--unpaid penalty, collection--time limitation to assess violation--judicial appeal--civil action, effect, exception--habitual violator, defined.

444.790. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 444.760 to 444.789 or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or* condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator. The penalty shall not be imposed until the director has sought to eliminate the violations

through conference, conciliation and persuasion and shall not be imposed for minor violations of sections 444.760 to 444.789 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 444.760 to 444.789 or minor violations of any term or condition of a permit issued pursuant to sections 444.760 to 444.789. The commission shall define by rule and regulation the term "minor violation".

2. The commission shall promulgate rules and regulations for the assessment of administrative penalties. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the civil penalty specified in section 444.787. Such rules shall reflect the criteria used for the administrative penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a), Section 3008(a) and the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the department may reasonably deem relevant. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative penalty paid pursuant to this section shall be placed in the state treasury and credited to the general revenue fund. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

3. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

4. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty; however, either party may require that the judicial appeal is tried as a trial de novo in the circuit court of the jurisdiction where the violation occurred.

5. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court. The assessment of an administrative penalty shall preclude the assessment of a monetary penalty for the same violation by the attorney general and the judicial assessment of a civil penalty for the same violation except that this limitation shall not apply to persons who** the department has determined *** have habitually violated the requirements of the Missouri land reclamation law, the land reclamation laws of other states or federal laws pertaining to land reclamation. The commission shall promulgate rules and regulations to provide further clarification of a habitual violator under this subsection.

(L. 1991 S.B. 45)

*Word "of" appears in original rolls.

**Word "whom" appears in original rolls.

***Word "to" appears here in original rolls